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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/698,310	10/27/2000	William L. Reber	WLR002	6204

34399 7590 01/15/2010

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EXAMINER	
KARMIS, STEFANOS	

ART UNIT	PAPER NUMBER
3693	

NOTIFICATION DATE	DELIVERY MODE
01/15/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	09/698,310	REBER, WILLIAM L.	
	Examiner	Art Unit	
	STEFANOS KARMIS	3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 November 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *33-58* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *33-58* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____ .

DETAILED ACTION

1. This communication is in response to Applicant's amendment filed 09 November 2009.

Status of Claims

2. Claims 1-32 are cancelled. There are no new amendments to the claims. Claims 33-58 are pending.

Response to Arguments

3. Applicant's arguments with respect to the rejection under 35 U.S.C. 101 for claims 33-58 are not persuasive. Under current examination guidelines a process must meet the machine or transformation test. Further, even if tied to a machine, the machine must impose meaningful limits on the claims scope and be more than insignificant extra solution activity. While, independent claims 33, 42, and 50 are tied to a machine, they fail to impose meaningful limits and the machine is only used in insignificant extra solution activity. For example, claim 33 recites the machine in insignificant steps, such as capturing, displaying, and transmitting. The steps of interacting, identifying, and facilitating are not tied to a machine. Therefore claims 33-58 remain rejected under 35 U.S.C. 101. Amending the claims to tie the machine in these steps would overcome the rejection.

4. Applicant's arguments regarding the rejection under 35 U.S.C. 103(a) as being obvious over Ogasawara in view of Slater have been considered but are not persuasive.

Applicant argues that the rejection under 103(a) is improper because the combination of Ogasawara and Rhoads lacks common sense under KSR. The Examiner respectfully disagrees. Examiner first notes that the Examiner relied on a teaching, suggestion, motivation to combine the references. As noted below, Ogasawara teaches capturing via a handheld cellular telephone and in response to actions of a user, a digital image of a three-dimensional product having visually recognizable packaging (column 20, lines 17-67) and displaying the digital image of the three-dimensional product to the user on a display device of the handheld cellular telephone (column 20, lines 17-67). Ogasawara teaches that the three-dimensional objects include bread, milk, etc. Ogasawara fails to teach that the product is a printed publication. Slater teaches an image processing method in which a content identification identifies specific items in images (Abstract). Specifically, Slater teaches the identification of man-made objects, such as buildings (column 5, line 48 thru column 6, line 46). It would have been obvious to one of ordinary skill in the art to modify the teachings of Ogasawara for recognizing visually distinct shapes to include the teachings of Slater for recognizing buildings because it would provide for recognition of buildings having a distinct shape that the user has an interest in. This would allow for the teachings of Ogasawara for making seat reservations or obtaining tickets because the restaurant/venue would be recognized.

There was no KSR analysis done. Nonetheless, KSR would still yield the combination of Ogasawara and Slater. Under KSR, the technical ability exists to combine the elements as claimed and the results of the combination would be predictable. Therefore Applicant's arguments are not persuasive.

5. Regarding claim 33, Applicant argues that the prior art fails to teach identifying the restaurant, based on the recognition of the restaurant in the digital image of the location, and not based on an optical code.

As noted in the rejection, Ogasawara teaches that the invention can apply recognition to an image having a distinct or identifiable shape or other visually identifiable characteristics (column 23, lines 11-31). Examiner noted that Ogasawara fails to specifically teach a restaurant in the image. Slater teaches an image processing method in which a content identification identifies specific items in images (Abstract). Specifically, Slater teaches the identification of man-made objects, such as buildings (column 5, line 48 thru column 6, line 46). Examiner notes that restaurants are commonly in buildings and have unique building shapes. Therefore, it would have been obvious to one of ordinary skill in the art to modify the teachings of Ogasawara for recognizing visually distinct shapes to include the teachings of Slater for recognizing buildings because it would provide for recognition of buildings having a distinct shape that the user has an interest in. This would allow for the teachings of Ogasawara for making seat reservations or obtaining tickets because the restaurant/venue would be recognized. Therefore, Applicant's arguments is not persuasive.

Applicant also argues that the prior art fails to teach facilitating a reservation at the restaurant. The Examiner respectfully disagrees. Ogasawara specifically refers to using the invention to obtain ticket reservations and seat reservations (column 7, lines 13-25 and column 21, lines 36-53 and column 23, lines 48-57). Clearly a reservation in a restaurant is a seat reservation, in that it reserves your seat at a table or a group of seats at a table. This is well

known in the art. Therefore this argument is not persuasive. Claims 42 and 50 contain similar arguments to claim 33 and therefore similar reasoning applies.

6. Regarding claims 34-41, 43-47, and 51-54, Applicant argues that the cited portions from the Mault reference are not supported in the provisional. The Examiner respectfully disagrees. While the provisional does not have all the figures of the non-provisional, the text of the provisional provides appropriate support under 35 U.S.C. 112 for the non-provisional (see at least, pages 2-3). If Applicant believes cited portions are not supported, the Examiner suggests that the Applicant point out what cited portions of the non-provisional are not supported by the provisional. Therefore, this argument is not persuasive.

7. Regarding claim 56, Applicant argues that the Official Notice taken by the Examiner by asserting that the feature is not "common knowledge in the art." As noted in the rejection, Ogasawara teaches ordering tickets (column 23, lines 48-57). The feature which applicant is not common knowledge in the art, is that the ordering of tickets is for a current date or pre-ordering a ticket for a later date. Apparently Applicant feels that this feature is not obvious to one of ordinary skill in the art and therefore Applicant assets that this feature is not "common knowledge in the art" or that the features are not "instant and unquestionable demonstration as being well known." While the Examiner respectfully disagrees, the Examiner will comply with Applicant's request for evidence that a ticket could be for a current date or pre-ordered for a later date. Examiner has provided the evidence below in the body of the rejection.

Regarding claim 57, Applicant argues that combination of Ogasawara in view of Slater in further view of Rhoads lacks common sense. The Examiner respectfully disagrees. Examiner first notes that the Examiner relied on a teaching, suggestion, motivation to combine the

references. As noted below, Ogasawara teaches capturing via a handheld cellular telephone and in response to actions of a user, a digital image of a three-dimensional product having visually recognizable packaging (column 20, lines 17-67) and displaying the digital image of the three-dimensional product to the user on a display device of the handheld cellular telephone (column 20, lines 17-67). Ogasawara teaches that the three-dimensional objects include bread, milk, etc. Ogasawara fails to teach that the product is a printed publication. Slater teaches an image processing method in which a content identification identifies specific items in images (Abstract). Specifically, Slater teaches the identification of man-made objects, such as buildings (column 5, line 48 thru column 6, line 46). Rhoades teaches using a cellular phone to obtain data about a product by sending an email to the product manufacturer (column 31, lines 25-44). Therefore it would have been obvious to a person of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Ogasawara and Slater to include the teachings of Rhoads because a sending emails provides a communications means to send an receiving information about products desired by a customer.

Further, Examiner notes there was no KSR analysis done. Nonetheless, KSR would still yield the combination of Ogasawara and Slater and Rhoads. Under KSR, the technical ability exists to combine the elements as claimed and the results of the combination would be predictable. Therefore Applicant's arguments are not persuasive.

Claim Rejections - 35 USC § 101

8. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 33-58 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claim 33, a proper process must be tied to another statutory class or transform underlying subject matter to a different state or thing (*Diamond v. Diehr,* 450 U.S. 175, 184 (1981); *Parker* v. *Flook,* 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson,* 409 U.S. *63,* 70 (1972); *Cochrane* v. *Deener,* 94 U.S. 780,787-88 (1876)). The particular machine or transformation test must involve meaningful limits and be more than insignificant "extra-solution" activity. Simply reciting a specific machine or a particular transformation of a specific article in an insignificant step, such as data gathering or outputting, is not sufficient to pass the test.

In claim 33, the claimed machines are used in steps such as data gathering or outputting. The steps of identifying the restaurant and facilitating at least one task are not tied to a machine and could be interpreted as being done by human interaction. For this reason, claim 33 fails to recite meaningful limits and is considered to be insignificant "extra-solution" activity. Independent claims 42 and 50 are rejected for similar reasons. Dependent claims 34-41, 43-49, and 51-58 fail to provide meaningful limits also. Therefore claims 33-58 stand rejected under 35 U.S.C. 101.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 33, 42, 50, 55, 56, and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogasawara, U.S. Patent 6,512,919 in view of Slater et al. (hereinafter Slater) U.S. Patent 6,157,735.

Regarding independent claims 33, 42, and 50, Ogasawara teaches a method comprising:

capturing via a handheld cellular telephone and in response to actions of a user, a digital image (column 20, lines 17-67);

displaying the digital image to the user on a display device of the handheld cellular telephone (column 20, lines 17-67);

interacting with the user to select the digital image (column 20, lines 17-67);

transmitting the digital image from the handheld cellular telephone to a server system (column 20, lines 17-67 and column 22, lines 59 thru column 23, lines 30);

identifying an item in the digital image based on the recognition of the item, and not based on the recognition of an optical code (column 22, lines 59 thru column 23, lines 30);

retrieving information via a computer network, based on the identification (column 6, lines 42-61 and column 21, lines 24-35 and column 22, lines 59 thru column 23, lines 30 and column 23, lines 48-57);

displaying at least a portion of the item information on the handheld cellular telephone (column 6, lines 42-61 and column 21, lines 24-35 and column 22, lines 59 thru column 23, lines 30); and

facilitating at least one associated task based on the information, the at least one associated task including facilitating reservations (column 7, lines 13-25 and column 21, lines 36-53 and column 23, lines 48-57).

Ogasawara thus teaches the invention may be used for ticket or seat reservations and for food ordering. Ogasawara teaches that the invention can apply to an image having a distinct or identifiable shape or other visually identifiable characteristics (column 23, lines 11-31). Ogasawara fails to specifically teach a restaurant in the image. Slater teaches an image processing method in which a content identification identifies specific items in images (Abstract). Specifically, Slater teaches the identification of man-made objects, such as buildings (column 5, line 48 thru column 6, line 46). It would have been obvious to one of ordinary skill in the art to modify the teachings of Ogasawara for recognizing visually distinct shapes to include the teachings of Slater for recognizing buildings because it would provide for recognition of buildings having a distinct shape that the user has an interest in. This would allow for the

teachings of Ogasawara for making seat reservations or obtaining tickets because the restaurant/venue would be recognized.

Claims 48 and 49, Ogasawara teaches obtaining images of real world products that are non-planar (column 20, lines 17-67 and column 23, lines 11-31). Slater teaches an image processing method in which a content identification identifies specific items in images/non-planar objects (Abstract and column 5, line 48 thru column 6, line 46). Specifically, Slater teaches the identification of man-made objects, such as buildings (column 5, line 48 thru column 6, line 46).

Claim 55, Ogasawara teaches wherein the at least one associated task includes ordering a ticket (column 23, lines 48-57).

Claim 58, Ogasawara teaches wherein the at least one associated task includes placing a call to a person (column 19, lines 31 thru column 20, line 16).

12. Claims 34-41, 43-47, and 51-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogasawara, U.S. Patent 6,512,919 in view of Slater et al. (hereinafter Slater) U.S. Patent 6,157,735 in further view of Mault U.S. Publication No. 2003/0208409.

Regarding claims 34-38, 43-47, and 51, Ogasawara teaches that the invention can be used for ticket/seat reservations, food ordering, text/voice/video guidance applications, information inquiry and the like (column 23, lines 48-57). Ogasawara fails to teach the specifics of restaurant information that includes scheduling, food, transportation, visual, audio content/information. Mault teaches a portable computing device for displaying food and restaurant information (paragraph 0046 and 00071). Mault teaches that the PDA can visually display directions to the restaurant, ordering/food information (paragraph 0047 and 0089). The PDA also contains audio and speech recognition for communicating with the user (paragraphs 0009, 0014, 0089). It would have been obvious to a person of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Ogasawara in view of Slater for recognizing a restaurant and performing seat reservations and food ordering to include the teachings of Mault for providing restaurant information such as scheduling, food, transportation to a PDA or cellular phone because it provides users with access to information about the restaurant such as nutritional information and location information which is helpful when ordering food and making the seat reservations as taught by Ogasawara.

Regarding claims 39-41 and 52-54 Ogasawara teaches capturing via a handheld cellular telephone and in response to actions of a user, a digital images and using the phone for ticket/seat reservations, food ordering, text/voice/video guidance applications, information inquiry and the like (column 23, lines 48-57 and column 20, lines 17-67). Ogasawara fails to teach that the at least one task includes a customized task that is also shred by other users. Mault teaches that the user of the PDA sends customized tasks from the PDA to the restaurant/weight-loss

company/service provider (paragraph 0067, 0076, and 0098). Mault further teaches that the users customized food orders at various restaurants can be sent to other authorized users such as physicians, diet counselors, etc. (paragraph 0026). It would have been obvious to a person of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Ogasawara in view of Slater for recognizing a restaurant and performing seat reservations and food ordering to include the teachings of Mault for providing customized tasks to a service provider because it provides users with access to information desired by the user and specific to the users needs, which is useful in the restaurant environment where many users have dietary concerns and nutritional concerns.

13. Claim 56 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ogasawara, U.S. Patent 6,512,919 in view of Slater et al. (hereinafter Slater) U.S. Patent 6,157,735 in further view of Goldstein et al. (hereinafter Goldstein) U.S. Patent 6,216,227.

Regarding claim 56, Ogasawara teaches wherein the at least one associated task includes ordering a ticket (column 23, lines 48-57). Ogasawara fails to teach the ticket is either pre-ordered for a later date or ordered for a current date. Goldstein teaches a wireless smart card for storing and validating electronic tickets (Abstract). Specifically, Goldstein teaches that the tickets can be for any date, including future events or current dates (column 5, lines 7-23 and Figure 2; Examiner notes for example, baseball tickets can be pre-purchased for games on 9/22/98, 9/23/98 and 9/24/98). Therefore it would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Ogasawara in view of

Slater for ordering tickets to specify the date for the event as taught by Goldstein because it is common for users to purchase tickets in advance for items like sports and concerts or other highly anticipated shows or to purchase tickets on the current data for items like movie tickets and users often purchase tickets based on what date they have availability.

14. Claims 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ogasawara, U.S. Patent 6,512,919 in view of Slater et al. (hereinafter Slater) U.S. Patent 6,157,735 in view of Rhoads et al. (hereinafter Rhoads) U.S. Patent 6,947,571.

Regarding claim 57, Ogasawara fails to teach that the at least one associated task further includes: sending an email message. Rhoades teaches using a cellular phone to obtain data about a product by sending an email to the product manufacturer (column 31, lines 25-44). Therefore it would have been obvious to a person of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Ogasawara to include the teachings of Rhoads because a sending emails provides a communications means to send an receiving information about products desired by a customer.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEFANOS KARMIS whose telephone number is (571)272-6744. The examiner can normally be reached on M-F: 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Respectfully Submitted
/Stefanos Karmis/
Primary Examiner, Art Unit 3693
14 January 2010